

**AGREEMENT
ONE-STOP WORKFORCE OPERATIONS**

TABLE OF CONTENTS

RECITALS 6

Section 1 Definitions 7

Section 2 Contract Documents 10

2.1 Order of Preference 10

2.2 Modifications to Exhibits 10

Section 3 Coordination of Services 11

3. Coordination and Liaison 11

Section 4 Services 11

4. Services 11

Section 5 Compensation

5. Compensation and Method of Payment 12

5.1 Budget 12

5.2 Reimbursable Expenses 12

5.3 Invoices 12

5.4 Maximum Contract Amount 13

5.5 Recovery of Incorrect Payments 13

5.6 Additional Program Conditions 14

5.7 Federal Funds Contingency 14

5.8 No Duplication of Funds for Same Services 14

Section 6 Term 14

Section 7 Center Locations / Licensed Premises 14

7. Center Locations; License and Acceptance of Premises 14

Section 8 One-Stop Partners 15

8. Access to Services; Co-Location 15

Section 9 Opportunities for employment with Contractor 16

9. Employment with Funds 16

Section 10 Background Checks 16

10. Required Background Checks	16
10.1 Hiring and Employment Decisions; Volunteers	16
10.2 Services for Youth	16
Section 11 Enforcement/Termination	17
11. Enforcement Remedies/ Termination of Agreement	17
11.1 Enforcement Remedies	17
11.2 Termination due to Changes in Program – PROWRA	18
11.3 Termination due to Criminal Offenses	18
11.4 Termination for Convenience	18
11.5 Termination for Delinquent Loans, Contract Obligations, and Taxes	18
11.6 Termination by Contractor	19
11.7 Payment upon Termination	19
11.8 Return of Materials and Equipment	19
Section 12 Examination of Records/Audits	19
12. Examination of Records	19
Section 13 Insurance	20
13. Insurance	
13.1 General Conditions	20
13.2 Proof of Insurance	21
13.3 Additional Insureds	21
13.4 Waiver of Subrogation	21
13.5 Subcontractors and Subconsultants	21
13.6 Workers’ Compensation/Employer’s Liability Insurance	22
13.7 Commercial General Liability	22
13.8 Business Automobile Liability	22
13.9 Professional Liability (Errors & Omissions)	22
13.10 Cyber Liability	22
13.11 Commercial Crime including Client Coverage	22
13.12 Property Insurance	23
13.13 Additional Provisions	23
Section 14 Defense and Indemnification	23
Section 15 Compliance with Laws	24
15. Compliance with Applicable Laws	24
15.1 Grievance Policy	27
15.2 Debarment	27
15.3 No Discrimination in Program Participation	28

15.4 Prohibited Transactions	28
15.5 Byrd Anti-Lobbying	29
15.6 Mandatory Disclosures	29
15.7 No Employment of Illegal Aliens to perform work under the Agreement	29
15.8 No Discrimination in Employment (City Executive Order No. 8)	30
15.9 Non-Discrimination and Equal Employment Opportunity (Federal Requirements)	31
Section 16 Intellectual Property	31
16. Intellectual Property Rights	31
16.1 Ownership	31
16.2 Copyrightable Intellectual Property	32
16.3 Patentable Intellectual Property	33
16.4 Third Party Products, Materials and Processes	33
16.5 Federal License	33
16.6 Restrictions on Other City Intellectual Property	34
16.7 Contractor’s Pre-existing Intellectual Property	34
Section 17 Data; Personal Information; Protection	34
17. Personal Information; Data Protection; Protected Health Information	34
17.1 Data Protection Laws	34
17.2 Personal Information	34
17.3 Compliance with Law and Regulation	35
17.4 Software Programs	35
17.5 Security of Personal Information and Access to Software Programs	35
17.6 Confidentiality	35
17.7 Contractor Use of Personal Information	35
17.8 Protected Health Information	36
Section 18 City Confidential Information/Open Records	36
18. Confidential Information; Open Records	36
18.1 City Proprietary and Confidential Information	36
18.2 Use and Protection of Proprietary Information and Confidential Information	36
Section 19 Additional Provisions	38
19.1 Reasonableness of Consent or Approval	38
19.2 Force Majeure	38
19.3 Status of Contractor	38
19.4 Legal Authority	38
19.5 Survival of Certain Provisions	39

19.6 Notices	39
19.7 Disputes	39
19.8 Governing Law; Venue	39
19.9 No Construction against drafting party	40
19.10 When Rights and Remedies Not Waived	40
19.11 Taxes, Late Charges, and Permits	40
19.12 Assignment and Subcontracting	40
19.13 Inurement	41
19.14 No Third Party Beneficiary	41
19.15 No Authority to Bind City to Contracts	41
19.16 Severability	41
19.17 Conflict of Interest	41
19.18 Advertising and Public Disclosure	42
19.19 City Execution of Agreement	42
19.20 Agreement as Complete Integration-Amendments	42
19.21 Use, Possession or Sale of Alcohol or Drugs	42
19.22 Time is of the Essence	43
19.23 Tobacco Products and Smoking Policy	43
19.24 Litigation Costs and Attorneys' Fees	43
19.25 Notice of Pending Litigation	43
19.26 Electronic Signatures and Electronic Records	43

**AGREEMENT
ONE-STOP WORKFORCE OPERATIONS**

THIS AGREEMENT or Memorandum of Understanding (the “Agreement”) is between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (“Denver”), for itself and on behalf of the **Division of Workforce Development, a division of the Office of Economic Development** (the “Agency”) and the **Denver Workforce Development Board** (the “Local Board”), and together with Denver (the “City”) and **ARBOR E&T, LLC, dba ResCare Workforce Services**, a limited liability Company, authorized to conduct business in the State of Colorado, with a business address of 9901 Linn Station Road, Louisville, KY 40223 (“Contractor”), each the City and the Contractor a “Party” and jointly the “Parties”.

RECITALS

A. On July 22, 2014, the United States Congress enacted the Workforce Innovation and Opportunity Act of 2014 (“WIOA”) to provide, among other things, workforce investment activities through statewide and local workforce development systems, increase employment, retention, and earnings of participants, and increase attainment of occupational skills by participants. Through such activities, WIOA seeks to improve the quality of the workforce, reduce welfare dependence, increase economic self-sufficiency, meet the skill requirements of employers, and enhance the productivity and competitiveness of the productivity and competitiveness of the Nation.

B. The City and County of Denver has been designated by the Governor of the State of Colorado as a local workforce investment area in order to receive and allocate WIOA funding and to otherwise coordinate WIOA activities. In addition, a local workforce development board has been established to carry out any WIOA specified functions.

C. The City has been or will be designated by the State of Colorado as a sub-recipient of WIOA funds for the Denver local area pursuant to an agreement with the State of Colorado Department of Labor and Employment in order to implement and coordinate WIOA activities with the City’s Local Board in accordance with WIOA.

D. WIOA requires, among other things, certain partnering and collaboration activities to align WIOA with other federally funded workforce programs including without limitation certain elements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”) related to the Temporary Assistance for Needy Families program (“TANF”).

E. The Agency, acting as WIOA program administrator for the City and the Local Board, advertised for proposals to provide a one-stop delivery system including providing services at certain city owned or operated facilities.

F. The Contractor, in response to that advertised request for proposals, has submitted a written proposal to serve as the City’s One-Stop Operator for workforce investment activities.

G. The Agency’s executive staff previously reviewed and analyzed the proposals received and provided that information to the Mayor and the Local Board who after further review and consideration mutually determined to retain the Contractor under a transition agreement (City Alfresco No. 201627862).

H. The Parties have completed all or substantially all transition activities necessary under that Agreement and the Mayor and the Local Board now desire to designate the Contractor as the local area’s One Stop Operator, for the term of this Agreement, responsible for full-service One Stop delivery system of services and center operations and related activities in accordance or consistent with WIOA.

I. This Agreement, and its Exhibits, sets forth the conditions upon which the One-Stop Delivery System will be implemented in accordance with applicable laws.

The Parties therefore agree as follows:

Section 1 Definitions

1. DEFINITIONS: In addition to any other definitions contained elsewhere in this Agreement, the following definitions will apply to this Agreement and to exhibits referenced and attached hereto. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

- 1.1.** “Arie P. Taylor Building” means the Arie P. Taylor Municipal Center located at 4685 Peoria Street, Denver, CO 80239.
- 1.2.** “Castro Building” means the Richard T. Castro Building located on the DHS Federal Property at 1200 Federal Blvd., Denver, CO 80204.
- 1.3.** “City Buildings” means the Arie P. Taylor Building, the Castro Building, and the DHS Eastside Office.
- 1.4.** “City Law” shall include the Denver Charter, Denver Revised Municipal Code, executive orders, rules, regulations, policies and procedures prescribed by the City which govern funds which are or may after become obligated under this Agreement. City Law may include, but is not limited to, City laws set forth in Section 15 of this Agreement, as well as any and all amendments thereto which may currently or hereafter be in effect.
- 1.5.** “City’s Office Furniture” means new or used office cubicles, desks, chairs, file and storage cabinets, furniture, movable fixtures and other related personal property as set

- forth in more detail on **Exhibit J**. “City’s Office Furniture” excludes computers, laptops, tablets, electronic devices, fax machines, and other related equipment.
- 1.6. “Contractor Personal Property” means every kind of business personal property provided by the Contractor to provide the Services in the Licensed Premises including without limitation furniture and equipment that is moveable without damage to itself or the DHS Premises.
 - 1.7. “Denver Public Facilities Leasing Trust 2005A” means the owner and Landlord for the Castro Building.
 - 1.8. “DHS” means the Denver Department of Human Services, a department of Denver.
 - 1.9. “DHS Director” means the Executive Director of DHS.
 - 1.10. “DHS Director of Facilities” means the DHS Director of Facilities who oversees and manages building management matters for the Castro Building and DHS Eastside Office.
 - 1.11. “DHS Premises” means collectively the Castro Building and the DHS Eastside Office.
 - 1.12. “DWD” means the Agency’s Division of Workforce Development.
 - 1.13. “DWD Director” means the Director of the Division of Workforce Development.
 - 1.14. “DHS Eastside Office” means the DHS offices located at 3815 Steele Street, Denver, CO 80205.
 - 1.15. “Director of Real Estate” means the Director of Real Estate for the City who oversees matters related to the grant of the limited license for the Licensed Premises and the provision of City’s Office Furniture.
 - 1.16. “Director of Facilities Management” means the Director of Facilities Management of the Department of General Services who oversees and manages building management matters for the Arie P. Taylor Building.
 - 1.17. “DPLT 2012 Master Lease” means the Lease Purchase Agreement No. 2012C dated May 17, 2012 under which the City subleases from Denver Properties Leasing Trust 2012C certain real property and leasehold improvements including the Arie P. Taylor Building. (For cross-reference purposes, the DPLT 2012 Master Lease describes the Arie P. Taylor Building as the “Arie P. Taylor Building and Denver District 5 Police Station”).
 - 1.18. “DPFLT 2005 Master Lease” means the Lease Purchase Agreement No. 2005A dated August 9, 2005 under which the City subleases from the Denver Public Facilities Leasing Trust 2005A certain real property and leasehold improvements located in the southeast corner of Federal Boulevard and West Holden Place in Denver, Colorado (the “DHS Federal Property”) including the Castro Building. (For cross-reference

purposes, the DPFLT 2005 Master Lease describes the DHS Federal Property as the “Human Services Center Properties”).

- 1.19. “Federal Funds” means an award or appropriation of monies from the Federal Government for purposes of administering the Program.
- 1.20. “Federal Government” shall include representatives of the agency, department or office of the United States of America which is or may hereafter be empowered to promulgate, review or enforce rules governing the expenditure of Federal Funds which are or may hereafter become obligated under this Agreement.
- 1.21. “Federal Law” shall include any laws of the United States of America which govern funds which are or may after become obligated under this Agreement. Federal Law may include, but is not limited to, federal laws set forth in Section 15 of this Agreement, as well as any and all amendments thereto which may currently or hereafter be in effect.
- 1.22. “Licensed Premises” means the office space located in the DHS Premises and the Arie P. Taylor Building that has been or will be made available to the Contractor to provide the Services during the Term as more particularly described and depicted on **Exhibit H**. Each such space by itself and together with the others is a “Licensed Premises”.
- 1.23. “Local Board” has the meaning given to the term in 29 U.S.C. Sec. 3102 Sec. (33).
- 1.24. “One-Stop Operator” has the meaning given to the term in 29 U.S.C. Sec. 3102 Sec. (41).
- 1.25. “One-Stop Partner” has the meaning given to the term in 29 U.S.C. Sec. 3102 Sec. (42).
- 1.26. “Program” means any and all authorized activities necessary to establish and implement a One-Stop Delivery System under the Workforce Innovation and Opportunity Act, (“WIOA”), Public Law 113-129 (July 22, 2014), 29 U.S.C. 3101, et seq., (WIOA Adult CFDA NO. 17.258, WIOA Dislocated Worker CFDA NO. 17.260, WIOA Youth 17.259), which supersedes the Workforce Investment Act 1998, Public Law 105-220, as codified at, 29 U.S.C. § 2801, et seq., (“WIA”) and the “Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996” (the “Act”), Public Law 104-193, as codified at 42 U.S.C. §601, et seq., (TANF-CFDA No. 93.558), as supplemented by the Colorado Works Program Act of 1997, as amended, C.R.S. § 26-2-701, et seq., (“CWPA”).
- 1.27. “State Government” includes representatives of the agency, department or office of the State of Colorado which is or may hereafter be empowered to promulgate, review or enforce rules governing the Program.
- 1.28. “State Law” includes any laws of the State of Colorado which govern funds which are or may become obligated under this Agreement. State Law includes, but is not limited to, the state laws set forth in Section 15 of this Agreement, as well as amendments thereto which may currently or hereafter be in effect.

- 1.29. “Subcontractor” means an entity that furnishes to the Contractor services, materials, equipment, or supplies (other than standard office supplies or printing services) pursuant to this Agreement and excludes a One-Stop Partner.

Section 2
Contract Documents

2. **CONTRACT DOCUMENTS:**

- 2.1. **Order of Preference.** This Agreement consists of Sections 1 through 19, which precede the signature pages, and the following exhibits which are incorporated herein and made a part hereof by reference:

Exhibit A – Work Statement
Exhibit B – Budget
Exhibit C – Financial Administration Terms and Conditions
Exhibit D – General Program Terms and Conditions
Exhibit E – Certificate of Insurance
Exhibit F – WIOA Immigration Verification Affidavit
Exhibit G – HIPPA/HITECH Business Associate Terms
Exhibit H – Use of City Facilities Terms and Conditions
Exhibit I – DWD Background Check Policy
Exhibit J – City’s Office Furniture
Exhibit K–Technology and Data Terms and Conditions

In the event of any conflicts between the provisions in this Agreement and the exhibits, the language of this Agreement controls. In the event of any conflicts between Exhibits A through and including K, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Exhibit A – Work Statement
Exhibit B - Budget
Exhibit C (unless the City specifically notifies the Contractor in writing that a provision of Exhibit C prevails over this Agreement)
Exhibit D (unless the City specifically notifies the Contractor in writing that a provision of Exhibit D prevails over this Agreement)
Exhibit E – Certificate of Insurance
Exhibit F – WIOA Immigration Verification Affidavit
Exhibit G – HIPPA/HITECH Business Associate Terms
Exhibit H – Use of City Facilities Terms and Conditions
Exhibit I – DWD Background Check Policy
Exhibit J – City’s Office Furniture
Exhibit K–Technology and Data Terms and Conditions

- 2.2. **Modifications to Exhibits.** The Parties may modify an exhibit attached to this Agreement; provided, however, that no modification to an exhibit shall result in or be

binding on the City if any proposed modification(s), individually or collectively, requires an upward adjustment to the Maximum Contract Amount. The Parties shall, in each instance, memorialize in writing any and all modifications to an exhibit by revising and restating that exhibit and referencing this City Contract Control number stated on the signature page below. A proposed modification to an exhibit will be effective only when it has been approved in writing by the Parties, approved as to form by the City Attorney's office, and filed with the City Clerk. All such modifications shall contain the date upon which the modified exhibit or exhibits shall take effect. Any modification to an exhibit agreed to by the Parties that requires an increase in the Maximum Contract Amount shall be evidenced by a written Amendatory Agreement prepared and executed by both Parties in the same manner as this Agreement.

Section 3 Coordination of Services

3. COORDINATION AND LIAISON: The Contractor will fully coordinate the Services with the City and the Local Board. The DWD Director or the DWD Director's designee, will serve as the liaison for City and Local Board for purposes of administering this Contract on a day-to-day basis.

Section 4 Services

4. SERVICES:

- 4.1.** In addition to any and all obligations required by law or stated elsewhere in this Agreement, or on any Exhibits, and subject to the terms and conditions of this Agreement and at the direction of the Director, the Contractor shall diligently undertake, perform, and complete all of the services for the Program, achieve all of the performance measures, and produce all the deliverables set forth on **Exhibit A, the Contractor's Work Statement (the "Services")**, to the City's satisfaction.
- 4.2.** The Contractor is ready, willing, and able to provide the Services.
- 4.3.** The Contractor shall faithfully perform the Services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.
- 4.4.** Under this Agreement, the Contractor functions as a Sub-awardee.
- 4.5.** Contractor is responsible for taking all actions reasonably necessary to ascertain the nature and location of the Services to be performed under this Agreement and to obtain sufficient knowledge of the general conditions that may affect the performance of the Services or the cost thereof. Any failure to take such actions or have such knowledge will not relieve Contractor from its responsibility to successfully responsibility to

successfully performing the Services without additional cost to the City. No oral representation by any officer or employee of the City or the Local Board concerning the nature, location or general conditions relating to the Services at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

Section 5 Compensation

5. COMPENSATION AND METHOD OF PAYMENT:

- 5.1. Budget:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered, performance measures achieved, and costs incurred under the Agreement in accordance with the budget contained in **Exhibit B**. The Contractor certifies the budget line items in **Exhibit A** contains reasonable allowable direct costs and allocable indirect costs in accordance with 2 C.F.R. 200, Subpart E.
- 5.2. Reimbursable Expenses:** Except as set forth on **Exhibit B**, there are no reimbursable expenses allowed under the Agreement.
- 5.3. Invoices:**
- a) Contractor shall provide the City with periodic invoices in a format and with a level of detail acceptable to the City in accordance with **Exhibit B**. Contractor's invoices must identify reasonable allowable direct costs and allocable indirect costs actually incurred in accordance with the budgeted categories and amounts contained in **Exhibit B**. The amounts invoiced by Contractor will be payable upon receipt and acceptance of designated work product as set forth herein and as fully documented by Contractor's periodic invoice. Funds payable by the City hereunder shall be distributed to the Contractor on a reimbursement basis only, for work performed during the prior month. Invoices submitted for services rendered that are submitted after such deadline are considered to be untimely, and must be submitted separately to be considered for payment. Payment for such late-submitted invoices shall be made only upon a showing of good cause for the late submission. Contractor's invoices will set forth the methodology used to determine costs for services invoiced. The City will have the right to dispute, and withhold payment for, any invoice that does not contain a sufficient statement of Contractor's methodology used to determine costs for services invoiced.
 - b) Contractor must not allocate costs billed to this Agreement to another Federal award unless the City notifies the Contractor in writing that that the City has shifted costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of an applicable Federal award. 2 C.F.R. 200.405(c).
 - c) Each invoice requesting payment under this Agreement will contain the following certification, signed by an official who is authorized to legally bind the Contractor,

which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that this invoice is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award for the Program. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

5.4. Maximum Contract Amount:

- i. Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **Six Million Seven Hundred Nineteen Thousand Five Hundred Eighty Eight Dollars and Zero Cents (\$6,719,588.00)** (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor’s risk and without authorization under the Agreement.
- ii. The City’s payment obligation, whether direct or contingent, extends only to Federal Funds received and budgeted for the Program, appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5.5. Recovery of Incorrect Payments: The City has the right to recover from the Contractor any and all incorrect payments issued to the Contractor due to any omission, error, fraud, and/or defalcation including but not limited to applying a deduction from subsequent payments under this Agreement or other means of recovery by the City as a debt due to the City or otherwise as provided by law. If, as a result of any audit or Program review relating to the performance of the Contractor or its officers, agents or employees under this Agreement, there are any irregularities or deficiencies in any audit or review, then the Contractor will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City’s written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City’s favor unless the Contractor obtains a resolution in its favor from the responsible official conducting the audit or review. The foregoing in no way limits Contractor’s obligation to reimburse the City for any costs or expenses paid under this Agreement that have been determined to be unallowable or disallowed by the Federal Government, State Government, or the City in accordance with applicable Federal Laws, State Laws, or the Charter, ordinances, rules, regulations, policies, and Executive Orders of the City and County of Denver.

- 5.6. **Additional Program Conditions:** If additional conditions are lawfully imposed on the Program and the City by the federal, state, or local law, executive order, rules and regulations, or other written policy instrument, the Contractor will comply with all such additional conditions. If the Contractor is unable or unwilling to accept any such additional conditions concerning the administration of the Program, the City may withhold payment to the Contractor of any unearned funds. If the City withholds payment for this reason, the City shall advise the Contractor and specify the actions that must be taken as a condition precedent to the resumption of payments.
- 5.7. **Federal Funds Contingency:** All payments under this Agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of Federal Funds for the purposes of the Program. In the event that Federal Funds, or any part thereof, are not awarded to the City or are reduced or eliminated by the Federal Government or the State of Colorado, the City may reduce the total amount of compensation to be paid to the Contractor by revising **Exhibits A and B**, in accordance with Section 2.2 above, or it may terminate this Agreement.
- 5.8. **No Duplication of Funds for Same Services:** The monies provided for and received under this Agreement are the only and sole funds received by the Contractor from or through the City and County of Denver for payment of the Services provided under this Agreement. In the event the Contractor shall receive any other monies from or through the City or any other party in order to provide the Services, then the compensation received hereunder may be reduced by such amount or amounts at the sole option of the City. The Contractor shall report promptly, in writing to the DWD Director, all amounts received upon receipt.

Section 6

Term

6. **TERM:** The Agreement will commence on July 1, 2016, (the “Commencement Date”) and will expire on June 30, 2017 (the “Expiration Date”) (together, the “Term”). Subject to the DWD Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the DWD Director. The Term may be extended by the City under the same terms and conditions for up to two (2) additional one (1) year renewal terms by a written amendment to this Agreement.

Section 7

Center Locations/Licensed Premises

7. **CENTER LOCATIONS; LICENSE AND ACCEPTANCE OF PREMISES:**
- 7.1. The Local Board has determined the Licensed Premises will serve as the comprehensive center locations for the Services.
- 7.2. Subject to any required consent of or by the City including its outside legal bond counsel, and subject to the terms and conditions of this Agreement and **Exhibit H**, the City grants to the Contractor a limited license and privilege to use the Licensed Premises during the Term. Any other consent, approval, construction, determination

or agreement which may be required with respect to such limited license shall be made for the City by the DWD Director, unless another City official, including without limitation, the Director of Real Estate, the Director of Facilities Management, and the DHS Director of Facilities, is specifically given such authority by the Denver Charter, Revised Municipal Code, an Executive Order of the City and County of Denver, or otherwise by written designation of the Mayor for a particular provision of this Agreement and its Exhibits.

- 7.3. The license privileges under this Agreement are specific to Contractor and may not be transferred or assigned in any manner without the prior written approval of the City.
- 7.4. Contractor will not take any action or fail to take any action that cause the City breach or be in default under the DPFLT 2005 Master Lease or the DPLT 2012 Master Lease. Contractor by its signature below acknowledges receipt of a copy of the DPFLT 2005 Master Lease and the DPLT 2012 Master Lease from the DWD Director. This Agreement shall not be effective until the Denver Capital Leasing Corporation actually delivered its written consent to the limited license under this Agreement to the City by signing the last page hereof. Denver Public Facilities Leasing Trust 2005A.
- 7.5. “Denver Public Facilities Leasing Trust 2005A” means the owner and Landlord for the Castro Building.
- 7.6. Contractor accepts the Licensed Premises in an “AS IS”, “WHERE IS” condition, with all faults and defects. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Licensed Premises.
- 7.7. The Licensed Premises shall, upon the Commencement Date, be vacant except for the City’s Office Furniture.

Section 8 One-Stop Partners

8. ACCESS TO SERVICES; CO-LOCATION: To the extent required or permitted by WIOA, the Contractor may, upon prior written approval of the DWD Director in each case, authorize a One-Stop Partner, who has executed an Agreement (also referred to in WIOA as a “Memorandum of Understanding”, 29 U.S.C. 3151(b) & (c)) with the City and the Local Board, to co-locate or otherwise provide access to the programs and activities carried out by the One-Stop Partner in the Licensed Premises. Contractor will monitor the activities of each such One-Stop Partner concerning the use of the Licensed Premises to ensure the One-Stop Partner fully complies with applicable terms and conditions of **Exhibit H** or any other requirements concerning the use of the Licenses Premises as specified in writing by the DWD Director.

Section 9

Opportunities for employment with Contractor

9. **EMPLOYMENT WITH FUNDS:** In connection with the performance of work under this Agreement, the Contractor shall submit pertinent job availability information on each job or position created with the use of the funds provided hereunder to the City's Office of Economic Development in the workforce job system, www.connectingcolorado.com or other system as may be required. In addition, the Contractor has agreed to consider Agency employees who have applied for employment with Contractor for jobs or positions created with the use of the funds provided hereunder.

Section 10

Background Checks

10. **REQUIRED BACKGROUND CHECKS:** Contractor acknowledges that as the designated One Stop Operator it, and its officers and employees, are in a position of public trust in the performance of this Agreement and must operate in a manner that maintains the highest standards of honesty, integrity and public confidence.
 - 10.1. **Hiring and Employment Decisions; Volunteers:** In order to prevent unknowingly employing someone or retaining a volunteer who may present a high risk for impropriety, misconduct, malfeasance, or criminal conduct, the Contractor, its officers, employees, and Subcontractors, will complete comprehensive criminal background checks on all people working or volunteering for the Contractor in accordance with all applicable laws, rules, regulations, grant awards, funding agreements, manuals, policies, procedures, informational memoranda, Program guidance, instructions, directives, or other written documentation issued by the Federal Government, State Government, or the City and provided to the Contractor. Additional types of background checks may be required and/or permitted depending on the type of position and nature of the duties performed. These additional background checks may include: Employment History Verifications, Drug Testing, Education /Degree Verification, Motor Vehicle Record (MVR), Commercial Driver's License (CDL), Professional License and Certification, Finger Printing, Child Abuse/Neglect Registry, Medicare/Medicaid Fraud Database, Polygraph Examination (DOS), Credit History, and NCIC or CCID Clearance.
 - 10.2. **Services for Youth:** The City's Office of Economic Development's "Background Checks Concerning Placement of Youth Participants Policy" for programs or services provided to youth under age 18, attached under **Exhibit I**.

Section 11
Enforcement/Termination

11. ENFORCEMENT REMEDIES/TERMINATION OF AGREEMENT: The City has the following rights of enforcement and termination:

11.1. Enforcement Remedies: If the Contractor materially fails to comply with the terms of this Agreement; the terms of any other agreement between the City and the Contractor; or any Federal Law, State Law or City Law in performing under this Agreement, and fails to cure any such noncompliance within ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the noncompliance, or if Contractor experiences financial difficulties as evidenced by its admitting in writing its inability to pay debts generally as they become due; making an assignment of all or a substantial part of its property for the benefit of its creditors; an order from a court of competent jurisdiction that Contractor is bankrupt or should have a general assignment for the benefit of its creditors; by its seeking or consenting to or acquiescing in the appointment of a receiving or trustee for all or a substantial part of its property or of its interest in this Agreement or if a receiver should be otherwise appointed by order of the Court on account of Contractor's insolvency which order has not been vacated, set aside or stayed within thirty (30) days from the date of entry appointing a receiver or trustee for all or a substantial part of its property the City may take one or more of the following enforcement actions:

- a) Withhold any or all payments to the Contractor, in whole or in part, until the necessary services, deliverables, or corrections in performance are satisfactorily completed during the authorized period to cure default;
- b) Deny any and all requests for payment and/or demand reimbursement from Contractor of any and all payments previously made to Contractor for those services or deliverables that have not been satisfactorily performed and which, due to circumstances caused by or within the control of the Contractor, cannot be performed or if performed would be of no value to the Program. Denial of requests for payment and demands for reimbursement shall be reasonably related to the amount of work or deliverables lost to the City;
- c) Disallow or deny all or part of the cost of the activity or action not in compliance;
- d) Suspend or terminate this Agreement, or any portion or portions thereof, effective immediately or (or such longer period as the City may allow) upon written notice to Contractor;
- e) Deny in whole or in part any application or proposal from Contractor for funding of the Program for a subsequent program year regardless of source of funds;
- f) Reduce any application or proposal from Contractor for refunding for the Program for a subsequent program year by any percentage or amount that is less than the

total amount of compensation provided in this Agreement regardless of source of funds;

- g) Refuse to award Contractor, in whole or in part, any and all additional funds for expanded or additional services under the Program;
 - h) Deny or modify any future awards, grants, or contracts of any nature by the City regardless of funding source for Contractor; or
 - i) Modify, suspend, remove, or terminate the Services, in whole or in part. If the Services, or any portion thereof, are modified, suspended, removed, or terminated, the Contractor shall cooperate with the City in the transfer of the Services as reasonably designated by the City; or
 - j) Take other remedies that may be legally available.
- 11.2. Termination due to Changes in Program – PROWRA:** If the Colorado Works Program Memorandum of Understanding executed by the City and the State of Colorado or any subsequent such Memorandum of Understanding is terminated for any reason, the total amount of compensation to be paid to the Contractor under this Agreement shall be reduced effective as of the date of termination of such Memorandum of Understanding and the Parties will revise **Exhibits A and B**, in accordance with Section 2.2 above accordingly.
- 11.3. Termination due to Criminal Offenses:** The City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.
- 11.4. Termination for Convenience:** The City has the right to terminate the Agreement without cause upon twenty (20) days prior written notice to the Contractor. However, nothing in this Section shall be construed as giving the Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the DWD Director.
- 11.5. Termination for Delinquent Loans, Contract Obligations, and Taxes:** Further, the City may also suspend or terminate this Contract, in whole or in part, if Contractor becomes delinquent on any obligation to the City inclusive of any loan, contractual, and tax obligation as due, or with any rule, regulations, or provisions referred to herein; and the City may declare the Contractor ineligible for any further participation in City funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Contractor is non-compliant with any applicable rules, laws, regulations, or Contract terms, the City may withhold up to one hundred (100) percent of said Contract funds until such time as the Contractor is found to be in compliance

by the City or is otherwise adjudicated to be in compliance, or to exercise the City's rights under any security interest arising hereunder.

- 11.6. Termination by Contractor:** Contractor may terminate this Agreement, upon written notice to the DWD Director if the City materially breaches this Agreement and fails to cure such breach within ninety (90) days (or within such longer period as agreed upon by the Parties in writing) following receipt of written notice thereof from the Contractor.
- 11.7. Payment upon Termination:** Upon termination of the Agreement, upon any ground, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation that has not been disallowed by the City for work duly requested and satisfactorily performed or services satisfactorily provided as described in the Agreement.
- 11.8. Return of Materials and Equipment:** If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

Section 12 Examination of Records/Audits

12. EXAMINATION OF RECORDS:

- 12.1.** Any authorized representative of the City, including the City Auditor or his or her representative, the State of Colorado, or the federal government will have the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of seven (7) years after the final payment under the Agreement or expiration of the applicable statute of limitations whichever is longer. This right of access also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents.
- 12.2.** The Contractor will keep true and complete records of all business transactions under this Agreement, will establish and maintain a system of bookkeeping satisfactory to the City's Auditor and give the City's authorized representatives access during reasonable hours to such books and records, except those matters required to be kept confidential by law. The Contractor agrees that it will keep and preserve for at least three (3) years all evidence of business transacted under this Agreement for such period.

- 12.3.** The Contractor acknowledges that it is subject to any and all applicable regulations or guidance of the United States Office of Management and Budget including, but not limited to, all applicable laws, rules, regulations, policy statements, and guidance issued by the Federal Government (including the United States Office of Management and Budget), regarding audit requirements and access to records requirements.
- 12.4.** In addition to the requirements contained in Exhibit C concerning Audits, Contractor's auditor will provide an accounting certification that the audit was conducted in accordance with applicable standards set forth in the U.S. Office of Management and Budget ("OMB") circulars. All accounting practices will be in conformance with generally accepted accounting principles (GAAP). Contractor will complete and deliver a copy of its audit report as directed by the DWD Director. Contractor's agreements with Subcontractors will contain a clause stating that the Subcontractor is subject to the Audit Requirements of this Agreement or as may be imposed by Federal, State and City Law. Final financial settlement under this Agreement will be contingent upon receipt and acceptance of Contractor's audit.
- 12.5.** If, as a result of any audit relating to the fiscal performance of Contractor or Subcontractor under this Agreement, the City receives notice of any irregularities or deficiencies in said audits, then the City will notify the Contractor of such irregularities or deficiencies. The Contractor will correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If the identified irregularities or deficiencies cannot be corrected by the date designated by the City, then Contractor will so notify the City in writing and will identify a date that Contractor expects to correct the irregularities or deficiencies; provided, however, that if Contractor's notice is dated within thirty (30) calendar days prior to the Expiration Date or effective date of earlier termination, then Contractor's corrections will be made and submitted to the City on or before the fifth working day from the Expiration Date or effective date of earlier termination. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes will be deemed to be resolved in the City's favor unless the Contractor obtains a resolution in its favor from the responsible federal official.

Section 13

Insurance

13. INSURANCE:

- 13.1. General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for two (2) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring

notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- 13.2. Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit E**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. In the event of a claim, the City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- 13.3. Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers, who are necessary for the performance of Services under this Agreement, as additional insured.
- 13.4. Waiver of Subrogation:** For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
- 13.5. Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such

subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

- 13.6. Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.
- 13.7. Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- 13.8. Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- 13.9. Professional Liability (Errors & Omissions):** Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.
- 13.10. Cyber Liability:** If the Contractor supplies software under the Agreement, it shall maintain Cyber Liability coverage with limits of \$1,000,000 per claim and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.
- 13.11. Commercial Crime including Client Coverage:** Contractor shall maintain \$1,000,000 in commercial crime coverage. Coverage shall include theft of City's money, securities or valuable property by Contractor's employees, including any extended definition of employee. Policy shall include Client Coverage. The City and County of Denver shall be named as Loss Payee as their interests may appear.

13.12. Property Insurance: Contractor shall maintain All-Risk Form Property Insurance on a replacement cost basis. The City and County of Denver shall be named Loss Payee as its interest may appear.

13.13. Additional Provisions:

- a) For Commercial General Liability, the policies must provide the following:
 - i. That this Agreement is an Insured Contract under the policy;
 - ii. Defense costs are outside the limits of liability;
 - iii. A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - iv. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and
 - v. Any exclusion for sexual abuse, molestation or misconduct has been removed or deleted

- b) For claims-made coverage:
 - i. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
 - ii. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**Section 14
Defense and Indemnification**

14. DEFENSE AND INDEMNIFICATION:

14.1. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees (“Denver’s Indemnitees”) for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to this Agreement or the Services (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City and Denver’s Indemnitees for any acts or omissions of Contractor or its subcontractors either passive

or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

- 14.2. Contractor's duty to defend and indemnify the City and Denver's Indemnitees, will arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify the City and Denver's Indemnitees will arise even if the City or a Denver Indemnitee is the only party sued by claimant or claimant alleges that the City's or Denver's Indemnitees' negligence or willful misconduct was the sole cause of claimant's damages.
- 14.3. Contractor will defend any and all Claims which may be brought or threatened against the City or Denver's Indemnitees and will pay on behalf of the City any expenses incurred by reason of such Claims including, without limitation, court costs and attorney's fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City or Denver's Indemnitees will be in addition to any other legal remedies available to the City or Denver's Indemnitees and will not be considered the City's or Denver's Indemnitees' exclusive remedy.
- 14.4. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- 14.5. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

Section 15

Compliance with Laws

15. **COMPLIANCE WITH APPLICABLE LAWS:** The Contractor shall perform or cause to be performed all Services in strict compliance with all applicable laws, rules, regulations, and codes of the United States, State of Colorado, and with the Charter, ordinances, regulations, policies, and Executive Orders of the City and County of Denver, as amended from time to time, whether or not specifically referenced herein. Any references to specific federal, state, or local laws or other requirements incorporated into this Agreement are not intended to constitute an exhaustive list of federal, state, and City requirements applicable to this Agreement. Applicable statutes, regulations and other documents pertaining to administration or enforcement of the services referenced in this Agreement and all other applicable provisions of federal, state or local law are deemed to be incorporated herein by reference. Compliance with all such statutes, regulations and other documents is the responsibility of the Contractor. Contractor shall ensure that any and all Subcontractors also comply with applicable laws. In particular, and not by way of limitation, the Services shall be performed in strict compliance with all laws, executive orders, ordinances, rules,

regulations, policies and procedures prescribed by the City, the State of Colorado, and the United States Government, and the following additional requirements:

a. The Workforce Innovation and Opportunity Act, (“WIOA”), Public Law 113-129 (enacted July 22, 2014 and effective July 1, 2015), 29 U.S.C. 3101, *et seq.*, which supersedes the Workforce Investment Act (WIA) and amends the Adult Education and Family Literacy Act; the Wagner-Peyser Act of 1933, as amended; and the Rehabilitation Act of 1973;

b. Any and all applicable federal, state, or City rules and regulations relevant to the administration of the Program including but not limited to, 20 C.F.R. Parts 652 and 660; 29 CFR Parts 95, 96, 97, and 99; and 34 C.F.R. Part 361;

c. Final WIOA Rules. 29 USC 3343(f) of WIOA requires the U.S. Department of Labor (USDOL) to issue final rules and regulations relating to the transition to, and implementation of WIOA as amended from time to time. As of the date written on the City’s signature page below, the USDOL and the US Department of Education have issued Notices of Proposed Rulemaking (NPRMs) for proposed regulations but have not issued final regulations. The WIOA NPRMs are available at: <http://www.doleta.gov/WIOA/NPRM.cfm>. In order to continue implementation of WIOA prior to the adoption of final rules, the Parties anticipate that the proposed NPRMs will inform them of the framework for WIOA activities until final WIOA regulations are finalized. In the event of a dispute between the Parties as to the application of a specific proposed WIOA regulation, the DWD Director has the authority to make a final decision regarding the application of the proposed WIOA regulation;

d. United States Department of Labor (USDOL), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Chapter II, Part 2900 et al. December 19, 2014. http://www.ecfr.gov/cgi-bin/text-idx?SID=809536d27633efa05b7350a37ed3f2d5&mc=true&tpl=/ecfrbrowse/Title02/2cfr2900_main_02.tpl;

e. Colorado Revised Statutes (C.R.S.) 8-77-109, Establishment of the Employment Support Fund (ESF) for use by the Colorado Department of Labor and Employment - Division of Employment and Training and C.R.S. 8-83-101, et seq., Workforce Development Part 1 Division of Employment and Training; and C.R.S. 8-83-104 State Employment Service;

f. United States Department of Labor-Employment and Training Administration (USDOL-ETA) Training and Employment Guidance Letters (TEGLs) issued under the authority of the Workforce Innovation and Opportunity Act of 2014 (WIOA) for the Adult, Youth, Dislocated Worker, Wagner Peyser Employment Service, and other core partner programs concerning guidance on operations, services, and program requirements. <http://wdr.doleta.gov/directives/>;

- g. The Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 U.S.C. §601, *et seq.*, as may be amended from time to time;
- h. The Colorado Works Program Act, C.R.S. §26-2-701, *et seq.*;
- i. The applicable terms and conditions of the Colorado Works Program Act Memorandum of Understanding, or any subsequent Memorandum of Understanding between the City and the State of Colorado, and as the same may be executed or amended from time to time;
- j. Any and all federal, state, or City rules and regulations promulgated pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act and the Colorado Works Program Act including but not limited to 45 C.F.R. 260, 45 C.F.R. 261, 9 C.C.R. 2503-6 (Volume 3); and 11 C.C.R. 2508-01 (Volume 5);
- k. All manuals, policies, procedures, informational memoranda, Program guidance, instructions, directives, or other written documentation issued by the federal government, State of Colorado, or the City and provided to the Contractor concerning the Program or the expenditure of Federal Funds;
- l. The terms and conditions contained in all Exhibits to this Agreement unless the City notifies the contractor in writing that a specific requirement does not apply to the performance of services under this Agreement;
- m. Any and all Grant Awards, Contracts, or other Agreements governing this Agreement;
- n. Any and all Requests for Proposals, or portions thereof, issued by the City for purposes of this Agreement as designated by the DWD Director;
- o. All applicable circulars of the U.S. Office of Management and Budget (“OMB”) including without limitation Omni-Circular “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, 2 C.F.R. Part 200, *et seq.*;
- p. The Deficit Reduction Act of 2005, 109 P.L. 171;
- q. Pass-Through of City Obligations Pursuant to The Applicant Verification Statute:
 - i. This Agreement is subject to Article 76.5 of Title 24, Colorado Revised Statutes, and any rules adopted pursuant thereto, as now existing or as hereafter amended (together the “Applicant Verification Statute”). Compliance by the Contractor is expressly made a contractual condition of this Agreement.
 - ii. The Contractor shall verify the lawful presence in the United States, of each natural person eighteen (18) years of age or older (the “Applicant”), who applies for Federal, State or Local Public Benefits (“Benefits”) conferred pursuant to

this Agreement, as such Benefits are defined in the Applicant Verification Statute. The Contractor shall require the Applicant to produce one of the forms of identification listed in the Applicant Verification Statute, and execute an affidavit in the form attached hereto as **Exhibit F** and incorporated herein by this reference. The Contractor shall maintain copies of each Applicant's identification documentation and affidavit, and shall make such copies available to the City upon request;

15.1. Grievance Policy: The Parties desire to ensure that clients are being adequately informed over pending actions concerning their continued participation in the program or activity provided by the Contractor. Also, clients must be allowed adequate opportunity to communicate dissatisfaction with the facilities or services offered by the Contractor. In order to satisfy this requirement, the Contractor agrees to provide a written "Grievance Policy" as a mechanism to provide opportunities for the City and its clients to meaningfully communicate problems, dissatisfaction, and concerns and to establish procedures for resolution of grievances. The policy must be communicated to clients upon their initial receipt of services. The Contractor agrees that a formal "Grievance Policy" will be adopted by its governing body and submitted to the DWD Director for approval at the DWD Director's discretion on or before the commencement of the term of this Agreement. Failure to provide an acceptable Grievance Policy shall constitute a material breach of this Agreement;

15.2. Debarment: The Contractor is subject to the prohibitions on contracting with a debarred organization pursuant to U.S. Executive Orders 12549 and 12689, Debarment and Suspension, and implementing federal regulations codified at 2 C.F.R. Part 180 and 2 C.F.R. Part 376. By its signature below, the Contractor assures and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. The Contractor shall provide immediate written notice to the DWD Director if at any time it learns that its certification to enter into this Agreement was erroneous when submitted or has become erroneous by reason of changed circumstances. If the Contractor is unable to certify to any of the statements in the certification contained in this paragraph, the Contractor shall provide a written explanation to the City within thirty (30) calendar days of the date of execution of this Agreement. Furthermore, if the Contractor is unable to certify to any of the statements in the certification contained in this paragraph, the City may pursue any and all available remedies available to the City, including but not limited to terminating this Agreement immediately, upon written notice to the Contractor.

The Contractor shall include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" in all covered transactions associated with this Agreement. The Contractor is responsible for determining the method and frequency of its determination of compliance with Executive Orders 12549 and 12689 and their implementing regulations;

15.3. No Discrimination in Program Participation: The Contractor will comply with any and all applicable federal, state, and local laws that prohibit discrimination in programs and activities funded by this Agreement on the basis of race, color, national origin, sex, disability, and age including but not limited to Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (ADA), Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the antidiscrimination provision of the Immigration Reform and Control Act of 1986 (IRCA), and the Equal Pay Act (EPA). Violations may be subject to any penalties set forth in said applicable laws and the Contractor agrees to indemnify and hold the City harmless from any and all claims, losses, or demands that arise under this paragraph. Contractor acknowledges that Title VI prohibits national origin discrimination affecting persons with limited English proficiency (LEP). Contractor hereby warrants and assures that LEP persons will have meaningful access to all services provided under this Agreement. To the extent Contractor provides assistance to LEP individuals through the use of an oral or written translator or interpretation services, in compliance with this requirement, LEP persons shall not be required to pay for such assistance. Further, Contractor acknowledges the City's Office of Human Rights and Community Partnerships, Office of Sign Language Services (OSLS) oversees access for deaf and hard of hearing people to City programs and services. The Contractor will comply with any and all requirements and procedures of the OSLS, as amended from time to time, concerning the provision of sign language interpreter services for all services provided by the Contractor under this Agreement;

15.4. Prohibited Transactions:

- a) **Interest of Contractor:** The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement, no person having any such interest will be employed.
- b) **Members of Congress:** No member of or delegate to the Congress of the United States of America shall be admitted to any share or part hereof or to any benefit to arise from this Agreement.
- c) **Employees:** No officer or employee of either the City or the Contractor shall derive any unlawful personal gain, either by salary, fee payment or personal allowance, from his or her association with the other party to this Agreement. Any contractual provision that contravenes the provisions of this Section shall be null and void. This Section shall not prohibit an officer or administrator of one party to this Agreement from being reimbursed by the other party for actual, out-of-pocket expenses incurred on behalf of the other party.

- d) **No Political Activity:** Without limiting the foregoing, the Contractor agrees that political activities are prohibited under this Agreement, and agrees that no funds paid to it by the City hereunder will be used to provide transportation for any persons to polling places or to provide any other services in connection with elections;

15.5. Byrd Anti-Lobbying: If the Maximum Contract Amount exceeds \$100,000, the Contractor must complete and submit to the Agency a required certification form provided by the Agency certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award;

15.6. Mandatory Disclosures: Contractor must disclose, in a timely manner, in writing to the Agency all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the work to be performed under this Agreement. Failure to make required disclosures can result in the Agency taking any of the remedies described in 2 C.F.R. §200.338;

The Federal Funding Accountability and Transparency Act of 2006, FFATA, and implementing rules and regulations;

The Clean Air and Federal Water Pollution Control Act, 42 U.S.C. 7606 (Section 306) and 33 U.S.C. 1368 (Section 508), Executive Order 11738, and other applicable Environmental Protection Agency (EPA) regulations. Contractor understands that all violations shall be reported to the Federal awarding agency, the Regional Office of the EPA, and the City;

The Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871) concerning energy efficiency and conservation plans.

15.7. No Employment of Illegal Aliens to perform work under the Agreement: This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”). The Contractor certifies that:

- At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

The Contractor also agrees and represents that:

- a) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- b) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- c) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
- d) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- e) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- f) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.
- g) The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

15.8. No Discrimination in Employment (City Executive Order No. 8): In connection with the performance of work under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

15.9. Non-Discrimination and Equal Employment Opportunity (Federal requirements):

- a) In carrying out its obligations under the Agreement, Contractor and its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with 29 CFR Part 37, Title VII of the Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and all other nondiscrimination and equal employment opportunity statutes, laws, and regulations. Contractor agrees not discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status. Contractor will ensure that all qualified applicants are hired, and all employees are considered for promotion, demotion, transfer; recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, selection for training (including apprenticeship), or any other employment-related opportunities, without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status.
- b) Contractor agrees to post notices affirming compliance with all applicable federal and state non-discrimination laws in conspicuous places accessible to all employees and applicants for employment. Contractor will affirm that all qualified applicants will receive consideration for employment without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status in all solicitations or advertisements for employees placed by or on behalf of Contractor.
- c) Contractor will incorporate the foregoing requirements of this section in all of its subcontracts.
- d) Contractor agrees to collect and maintain data necessary to show compliance with the nondiscrimination provisions of this section.

**Section 16
Intellectual Property**

16. INTELLECTUAL PROPERTY RIGHTS:

- 16.1. Ownership:** Except where the City has agreed in writing to accept a license or where expressly prohibited by federal law, the City and the Contractor intend that any and all copyright, trademark, servicemark, trade secret, patent, patent applications, or other intellectual property or proprietary rights, both registered and unregistered, whether existing now or in the future (“Intellectual Property”) in and to the Services, any other affiliated services supplied by the Contractor, directly or indirectly, and any creative works, inventions, discoveries, know-how, social media accounts, websites, domain

names, and mobile applications, and any improvements to and derivative works of any of the foregoing, created, purchased, licensed, used, or supplied by the Contractor, a Subcontractor, or a third party contractor in connection with the Services are the sole property of the City.

16.2. Copyrightable Intellectual Property:

- a) The City and Contractor intend that Intellectual Property includes without limitation any and all records, case files, databases, materials, information, text, logos, websites, mobile applications, domain names, templates, forms, documents, videos, podcasts, newsletters, e-mail blasts, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, multimedia or audiovisual materials, negatives, specifications, software, data, products, ideas, inventions, templates, know-how, studies, reports, and any other work or recorded information created, purchased, licensed, used, or supplied by the Contractor, or any of its Subcontractors or other third party contractors, in connection with the services provided under this Agreement, in preliminary or final forms, in paper or electronic format, and on any media whatsoever (collectively, “Materials”). The Contractor shall not use, willingly allow another to use, or cause any Materials to be used for any purpose other than for the performance of the Contractor's duties and obligations under this Contract without the prior, express written consent of the City. To the extent permitted by the U.S. Copyright Act, 17 U.S.C. §101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Contractor hereby sells, assigns and transfers all rights, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity.
- b) Contractor shall not create, purchase, license, supply or use any logos, software programs, software as a service, websites, mobile applications, domain names, social media accounts, or third party software, social media, applications or websites in connection with the Services or any other affiliated services supplied by the Contractor unless the program, product or service, in each case, is specifically identified as an expense on Exhibit B or Contractor has obtained the DWD Director’s prior written permission to create, purchase, license, supply or use the program, product or service and otherwise complied with all requirements of the City concerning said matter. The Contractor shall maintain and keep current an inventory, in such format as designated by the DWD Director, of all such approved Materials. Contractor will submit a copy of the most current version of the Materials inventory with Contractor’s periodic request for payment. The City will have final decision making authority to determine and/or edit the final content, design, layout, format, and “look and

feel” of any such Materials. The Contractor will ensure that all Materials, or any portion or version thereof, do not, directly or indirectly, in whole or in part, infringe upon any third party’s copyright, trademark, patent, or other intellectual property rights, title or interests.

16.3. Patentable Intellectual Property: The City and Contractor intend that Intellectual Property includes any and all software that is excluded from copyright materials as well as any improvement, invention, discovery, know-how, business method, or other invention which is or may be patentable or otherwise protectable under the laws of the United States (whether or not produced in the United States) conceived or first actually reduced to practice in the performance of work under this contract by the Contractor, or any of its third party contractors, in connection with the services provided under the Agreement. The Contractor shall immediately notify the DWD Director in writing of any such patentable Intellectual Property and provide the DWD Director with a complete written report describing in detail each specific software, know-how, method, invention, improvement or discovery.

16.4. Third Party Products, Materials and Processes: Contractor represents and warrants that the Services, and any other affiliated services supplied by Contractor in connection with this Agreement, will not infringe upon or violate the City’s Intellectual Property, any other rights held by the City to any intellectual property, or the intellectual property or proprietary rights of any third party. If the Contractor employs any third party product, design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the third party patentee or copyright owner. The Contractor shall defend, indemnify, and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of services. Where the Services, or any other affiliated services provided by Contractor, contain false, offensive, or disparaging content or portray the City, its appointed and elected officials, agents and employees, or any third party in a disparaging way, either as solely determined by the City or the third party, as appropriate, Contractor will immediately remove the false, offensive, or disparaging content. If Contractor fails to do so, the City will have the right, at the City’s sole election, to immediately enforce any remedies available to it under this Agreement or applicable laws. The requirements and obligations contained in the preceding sentences of this Section 16.4 will not apply to a specific third party patented device, material or processes that the DWD Director has directed, in writing, the Contractor to use.

16.5. Federal License: Contractor acknowledges that pursuant to Federal Law, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.

- 16.6. Restrictions on Other City Intellectual Property:** The Contractor will not use, reproduce, transmit, copy, distribute, alter, modify, register, or incorporate any registered or unregistered trademark or servicemark, logo, seal, flag, official insignia, name, icon, copyright, patent, or domain name of the Agency or the City without, in each case, the prior written permission of the DWD Director and the City’s Director of Marketing, or their designated representatives. Upon receipt of such permission, the Contractor shall fully coordinate all logo use with the City’s Director of Marketing or, if and as directed, with a designated employee of the Agency.
- 16.7. Contractor’s Pre-existing Intellectual Property:** Notwithstanding the language in Section 16.1, as between the Parties, Contractor shall retain all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights in any and all pre-existing tools, routines, programs, designs, technology, ideas know-how, processes, formulas, techniques, improvements, inventions and works of authorship which were made, developed, conceived or reduced to practice by Contractor prior to the commencement of work under this Agreement and which have general applicability apart from the Services and any derivative works thereof (collectively, the “**Contractor’s Pre-existing Intellectual Property**”). Contractor will within thirty (30) days from the Commencement Date, disclose to the DWD Director in writing all such Contractor’s Pre-existing Intellectual Property including without limitation pre-existing Contractor owned source code or object code. Contractor hereby grants the City perpetual, non-exclusive, non-transferable license to use all Contractor’s Pre-existing Intellectual Property that is incorporated into the Services.

Section 17

Data; Personal Information; Protection

17. PERSONAL INFORMATION; DATA PROTECTION; PROTECTED HEALTH INFORMATION:

- 17.1. “Data Protection Laws”** means (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality or security of Personal Information; and (ii) all applicable laws and regulations relating to electronic and non-electronic marketing and advertising; laws regulating unsolicited email communications; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Information; laws imposing licensing requirements; laws and other legislative acts that establish procedures for the evaluation of compliance; and all other similar applicable requirements.
- 17.2. “Personal Information”** means all information that individually or in combination, does or can identify a specific individual by or from which a specific individual can be identified, contacted, or located. Personal Information includes, without limitation, name, signature, address, e-mail address, telephone number, social security number

(full or partial), business contact information, date of birth, national or state identification numbers, and any other unique identifier or one or more factors specific to the individual's physical, physiological, mental, economic, cultural, or social identity.

- 17.3. Compliance with Law and Regulation:** Contractor confirms and warrants that it complies with any and all applicable Data Protection Laws relating to the collection, use, disclosure, and other processing of Personal Information and that it will perform its obligations under this Agreement in compliance with them.
- 17.4. Software Programs:** Contractor will use the software programs designated or otherwise approved by the City to collect, use, process, store, or generate all data and information, without or without Personal Information, in connection with the Services, or any other affiliated services provided by Contractor. Contractor will fully comply with any and all requirements and conditions associated with the use of such software programs as designated from time to time by the City, the State Government, or the Federal Government including without limitation the terms and conditions contained in **Exhibit K**.
- 17.5. Security of Personal Information and Access to Software Programs:** In addition, Contractor will establish and maintain data privacy and information security policies and procedures, including physical, technical, administrative, and organizational safeguards, in order to: (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Personal Information; (iii) protect against unauthorized disclosure, access to, or use of Personal Information; (iv) ensure the proper use of Personal Information; and (v) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing.
- 17.6. Confidentiality:** Unless otherwise permitted expressly by applicable law, all Personal Information collected, used, processed, stored, or generated in connection with the Services will be treated by Contractor as highly confidential information. Contractor will have no right, title, or interest in any Personal Information or any other data obtained or supplied by Contractor in connection with the Services. Contractor has an obligation to immediately alert the City if Contractor's security has been breached or if Contractor is aware of any unauthorized disclosure of Personal Information. This Section will survive the termination of this Agreement.
- 17.7. Contractor Use of Personal Information:** Contractor will: (i) keep and maintain Personal Information in strict confidence and in compliance with all applicable Data Protection Laws, and such other applicable laws, using such degree of care as is appropriate and consistent with its obligations as described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (ii) use and disclose Personal Information solely and exclusively for the purpose of providing the services hereunder, such use and disclosure being in accordance with this Agreement, and applicable law; and (iii) not use, sell, rent, transfer, distribute, or otherwise disclose

or make available Personal Information for Contractor's own purposes or for the benefit of anyone other than the City, the State Government, or the Federal Government without the prior written consent of the City and the person to whom the Personal Information pertains. This Section will survive the termination of this Agreement.

- 17.8. Protected Health Information:** The Contractor will comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all protected health information and all requirements contained in **Exhibit G**. Contractor shall submit to the DWD Director, within fifteen (15) days of the DWD Director's written request thereof, copies of Contractor's policies and procedures to maintain the confidentiality of protected health information to which the Contractor has access.

Section 18

City Confidential Information/Open Records

18. CONFIDENTIAL INFORMATION; OPEN RECORDS:

- 18.1. City Proprietary and Confidential Information:** Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to proprietary information and confidential information that may be owned or controlled by the City, and that the disclosure of such information may be damaging to the City or third parties. Contractor agrees that all proprietary information and confidential information or any other data or information provided or otherwise disclosed by the City to Contractor will be held in confidence and used only in the performance of its obligations under this Agreement. Contractor will exercise the same standard of care to protect such proprietary information and confidential information as a reasonably prudent contractor would to protect its own proprietary or confidential data. For purposes of this Section 1, the City's proprietary information and confidential information will include, without limitation, all information that would not be subject to disclosure pursuant to the Colorado Open Records Act or Denver ordinance, and provided or made available to Contractor by the City. Such proprietary information and confidential information may be in hardcopy, printed, digital, electronic, or other format.

18.2. Use and Protection of Proprietary Information and Confidential Information:

- a) Except as expressly provided by the terms of this Agreement, Contractor agrees that it will not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any proprietary or confidential information or any part thereof to any other person, party, or entity in any form of media for any purpose other than performing its obligations under this Agreement. Contractor further acknowledges that by providing proprietary information or confidential information, the City is not granting to Contractor any right or license to use such information except as provided in this Agreement. Contractor further agrees not to disclose or distribute to any other party, in whole

or in part, the proprietary information or confidential information without written authorization from the City and will immediately notify the City if any proprietary information or confidential information is requested from Contractor from a third party.

- b)** Contractor agrees, with respect to the proprietary information and confidential information, that: (A) Contractor will not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the City; (B) Contractor will retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (C) Contractor will, upon the expiration or earlier termination of this Agreement, at the City's election, either destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.
- c)** Contractor will develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted data received from, or on behalf of, the City. It is the responsibility of Contractor to ensure that all possible measures have been taken to secure the computers or any other storage devices used for the services to be provided under this Agreement, the proprietary information, or the confidential information. This includes, without limitation, industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.
- d)** Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of Contractor under this Agreement will survive the expiration or earlier termination of this Agreement. Contractor will not disclose proprietary information or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.
- e)** If the City is furnished with proprietary data or confidential information that may be owned or controlled by Contractor ("Contractor's Confidential Information"), the City will endeavor, to the extent provided by law, to comply with the requirements provided by Contractor concerning Contractor's Confidential Information. However, Contractor understands that all the material provided or produced by Contractor under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. (2015). In the event of a request to the City for disclosure of such information, the City will advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its Contractor Confidential Information and take necessary legal recourse. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Contractor further agrees to defend, indemnify, save, and hold harmless

the City from any Claims arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Section 18.2.5 including, without limitation, prompt reimbursement to the City of all reasonable attorneys' fees, costs, and damages that the City may incur directly or may be ordered to pay by such court.

Section 19 Additional Provisions

19. ADDITIONAL PROVISIONS:

- 19.1. Reasonableness of Consent or Approval:** Whenever under this Agreement the term "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.
- 19.2. Force Majeure:** performance of this Agreement may be delayed and/or suspended by any act of God, war, civil disorder, terrorist acts, employment strike, hazardous or harmful condition, or other cause beyond the control of either party (Force Majeure Event). Contractor shall use any means available to provide City with notice of any Force Majeure Event, and at its earliest possible opportunity. Neither Party shall be held liable for any default, damages and/or breach of agreement should the performance of this Agreement be delayed and/or suspended due to any Force Majeure Event. In the event performance of this Agreement is delayed and/or suspended due to Force Majeure Event, performance shall resume only upon the mutual assent of the Parties that the Force Majeure Event has subsided. Should the performance of the Agreement be suspended or delayed as the result of a Force Majeure Event, the Parties hereby agree that this Agreement shall be extended by the amount of time the performance is suspended or delayed.
- 19.3. Status of Contractor:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.
- 19.4. Legal Authority:** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants full authorization by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

19.5. Survival of Certain Provisions: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations in the following provisions will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period: Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19.1, 19.2, and 19.6-19.26.

19.6. Notices: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if concerning the Services to the City at:

DWD Director of Workforce Development or Designee
Office of Economic Development
City and County of Denver
201 West Colfax Avenue, Dept. 1011
Denver, CO 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

19.7. Disputes: All disputes between the City and the Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by Denver Revised Municipal Code, § 56-106(b)-(f). For the purposes of that procedure, the City official rendering a final determination shall be the DWD Director as defined in this Agreement.

19.8. Governing Law; Venue: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments

or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

- 19.9. No Construction against drafting party:** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because the Agreement or any provisions thereof were prepared by a particular party.
- 19.10. When Rights and Remedies Not Waived:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.
- 19.11. Taxes, Late Charges, and Permits:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.
- 19.12. Assignment and Subcontracting:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations under the Agreement or subcontract performance obligations without obtaining the DWD Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and, in addition to those found Section 11, shall be cause for termination of this Agreement by the City. The DWD Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

Services subcontracted under this Agreement shall be specified by written agreement and shall be subject to each applicable provision of this Agreement and any and all applicable Federal and State Laws with appropriate changes in nomenclature in referring to such subcontract. The Contractor shall submit proposed subcontract agreements to the DWD Director for the DWD Director's review and approval. Such consent of the City obtained as required by this paragraph shall not be construed to constitute a determination of approval of any cost under this Agreement, unless such approval specifically provides that it also constitutes a determination of approval of such cost.

- 19.13. Inurement:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.
- 19.14. No Third Party Beneficiary:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity including without limitation One-Stop Partners authorized to co-locate with Contractor in the Licensed Premises. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.
- 19.15. No Authority to Bind City to Contracts:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.
- 19.16. Severability:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.
- 19.17. Conflict of Interest:**
- a) No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Contractor shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.
 - b) The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement or other relationship, in conflict with those of the City. During the Term, the Contractor shall disclose promptly any potential conflicts of interest that arise from its activities and relationships with training or other service providers. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict. The Contractor

will have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

19.18. Advertising and Public Disclosure:

- a) **Approval Required:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the DWD Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the DWD Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.
- b) **Acknowledgment of Funding:** In accordance with applicable federal or state requirements, the Contractor shall prominently insert the following acknowledgement (or substantially similar acknowledgement) in all allowable advertising, public relations items, or informational materials, including without limitation, signs, media releases, promotional items, giveaways, and public announcements: "The activities, services, programs, and materials are made possible by support from the Office of Economic Development, Workforce Development of the City of and County of Denver through funding from the Workforce Innovation and Opportunity Act."

19.19. City Execution of Agreement: The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

19.20. Agreement as Complete Integration-Amendments: The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments thereto will, be binding upon the Parties and their successors and assigns. Amendments to this Agreement will become effective when approved by both Parties and executed in the same manner as this Agreement.

19.21. Use, Possession or Sale of Alcohol or Drugs: The Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions

or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.

- 19.22. Time is of the Essence:** The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
- 19.23. Tobacco Products and Smoking Policy:** There shall be no sale or advertising of tobacco products on the Licensed Premises, the City Buildings, or other facilities owned or operated or controlled by Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever but does not include any advertising and sponsoring which is a part of a performance or show or event displayed or held in City facilities. The Contractor and its officers, agents and employees will fully comply with the provisions of Denver Executive Order No. 99 prohibiting smoking in all indoor City Buildings and facilities.
- 19.24. Litigation Costs and Attorneys' Fees:** In the event of any litigation or other action between the City and the Contractor to enforce any provision of this Agreement or otherwise with respect to the subject matter hereof, each party shall bear all of its own costs and expenses, including attorneys' fees.
- 19.25. Notice of Pending Litigation:** The Contractor will notify the City in writing within five (5) calendar days of the date upon which any legal action or proceeding connected with or related to this Agreement is initiated by or brought against Contractor and will provide copies of all such documents provided to or served upon the Contractor.
- 19.26. Electronic Signatures and Electronic Records:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

END

SIGNATURE PAGES AND EXHIBITS FOLLOW THIS PAGE